

Steve Crocker,
Chairman, ICANN Board

[DATE]

Re. Board letter concerning ICANN Board Resolution Concerning Planning for Future gTLD Application Rounds

Dear Steve,

Thank you very much for your letter dated 17 November 2014. The GNSO Council very much appreciates the input provided by the Board to the GNSO Council's discussion concerning the planning for future gTLD application rounds.

As you are aware, the GNSO Council has formed a discussion group to review the first round of the new gTLD program and discuss and reflect upon experiences gained. The Discussion Group is expected to report its findings to the GNSO Council, which may include a list of recommended subjects for future GNSO Issue Report(s) that may lead to changes or adjustments for subsequent new gTLD application procedures.

For your information, I've attached a table that indicates how the topics that have been provided by the Board are being considered by the Discussion Group as well as the GNSO Council. As the input you have provided includes some additional nuances to the conversations to date, the GNSO Council will make sure that your input will be communicated to the Discussion Group as highlighted in the table. Furthermore, as the Discussion Group is planning to publish its recommendations [for possible future policy work](#) for public comment, we'll make sure to share these with you when this happens so that the Board has an additional opportunity to provide input should there still be items missing or not duly considered. I also want to reiterate that the Discussion Group is open to anyone interested to participate, so should any of the Board members be interested to participate in these meetings either as a Board representative or as an individual, they are more than welcome to do so.

Sincerely,

Jonathan Robinson

Area	Description and Rationale	GNSO Response
1	<p>Community considerations</p> <p>Community considerations are relevant to multiple elements of the gTLD application and evaluation process, including objection mechanisms, contention resolution, and enforcement of community-related registry policies. Implementation guidance from the GNSO describes the handling of community considerations in objection processes as well as calling for priority to be awarded to applications claiming to support communities in cases of contention. The difficulty of defining a community, determining whether a claimed community is appropriately scoped for participation in a global process, and multiple other factors relating to communities means that a complex analysis is undertaken in each case to determine what type of treatment is appropriate in a given instance. Additional policy work in this area could be considered.</p>	<p>The GNSO Discussion Group (DG) has identified issues related to community considerations, mainly focused on Community Priority Evaluation (CPE). The <u>Among other things, the DG is expressing concern that</u> <u>wishes to consider whether (i)</u> the process may be susceptible to gaming, <u>(ii)</u> the evaluation process may produce outcomes that are inconsistent, and <u>(iii)</u> that the overall approach may be contrary to the intent of the original recommendations. Based on the input from the ICANN Board, the GNSO Council will encourage the DG to consider communities more holistically, including the handling of community objections, the enforcement of community-related registration policies, and the criteria needed to define a community as it relates to new gTLDs.</p>
2	<p>Special case considerations</p> <p>Existing policy advice is broadly applicable e.g., policy advice specified requirements to be applied to all applied-for strings. Other than the community considerations noted above, policy advice does not provide a basis for differing requirements for certain types of applications, TLD uses, or business models. Following the publication of the applications received during the application period, issues were raised to the NGPC concerning development of rules for special cases. Examples include:</p> <ol style="list-style-type: none"> a. the discussion of “closed generic” applications. The NGPC <u>requested guidance</u> from the GNSO on this topic on 2 Feb 13, if it wished to provide such guidance; the GNSO <u>provided a response</u> on 7 Mar 13. b. consideration of a “.brand” category and applicable 	<p>The GNSO Discussion Group (DG) has also questioned <u>raised the question of</u> whether a one-size-fits-all approach made sense as it regards to applying for a TLD, the application fee amounts, evaluating the applications, and contractual obligations. The DG specifically mentions considering different application paths for different TLD types, such as closed, open, community-restricted, brand, single registrant/registry, and closed generic.</p>

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	<p>requirements. The NGPC passed a resolution on 26 March 14 on this issue, also providing the GNSO Council an opportunity to advise on whether the proposed amendment was inconsistent with the letter and intent of GNSO Policy. The GNSO provided its response on 9 May 14.</p> <p>c. GAC advice also included recommendations relating to “categories” of strings (e.g., sensitive strings or strings relating to regulated markets) and requirements that should be applied to these strings.</p> <p>Additional policy work on identifying particular cases of strings, applications, or TLD registration models, and whether any such should be recognized as requiring particular treatment, could be undertaken.</p>	
<p>3 Rights protections at the second level</p>	<p>Existing policy advice specifies that strings must not infringe the existing legal rights of others. As part of the implementation of the New gTLD Program, a number of rights protection mechanisms applicable to domain name registrations at the second level were created. The GNSO’s Special Trademark Issues (STI) working group gave advice on the proposed mechanisms of the Trademark Clearinghouse and Uniform Rapid Suspension (URS); however, these mechanisms have not been the subject of policy development in the GNSO process. An April 2012 NGPC resolution requested the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken. The GNSO Council has requested an issues report to be delivered in 2015 on the status of all rights protection mechanisms.</p>	<p>As noted in the Description and Rationale section of this document, the GNSO Council has requested an issues report to be delivered in 2015 on the status of all rights protection mechanisms.</p> <p>The GNSO Discussion Group (DG), furthermore, has noted a number of concerns related to the TMCH, the URS, and defensive registrations, but may want to consider deferring to the existing request, rather than creating a parallel effort.</p>
<p>4 String similarity</p>	<p>Existing policy advice provides that confusingly similar strings</p>	<p>The GNSO Discussion Group (DG) has noted a number of</p>

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	<p>should not be delegated as TLDs. This was implemented in a process incorporating use of an algorithm and human review for visual similarity, and an objection process for any claimed form of similarity. Individual panels reviewed string confusion objections and issued these decisions, which varied according to the analysis of the panel in question.</p> <p>The NGPC discussed a possible review mechanism for perceived inconsistent string confusion objection expert determinations, and directed that it be posted for public comment. The NGPC passed a resolution in June 2013 providing for no changes in the objection process relating to decisions on singular and plural versions of strings, and subsequently approved a resolution identifying two expert determinations as not in the best interest of the New gTLD Program and the Internet community, and requiring a three-member expert panel to re-evaluate the materials and determinations and render a final determination.</p> <p>Due to perceived inconsistency in process results as well as questions about the means used for determining what is confusingly similar (e.g., assessing similarity between singular and plural strings), this is an area where further policy guidance could be provided.</p>	<p>issues related to string similarity, including inconsistent results from string similarity objections, the handling of plurals, the inability to change the applied-for string after string similarity is identified, and whether auction is the ideal mechanism of last resort.</p>
5	<p>Registry agreement terms</p> <p>The base Registry Agreement was drafted based on existing policy advice on contractual conditions; for example, requiring the use of ICANN-accredited registrars. Subsequently, additional discussions and negotiations resulted in additional terms to the agreement. It may be appropriate for the GNSO to consider whether additional</p>	<p>The GNSO Discussion Group (DG) has noted several issues related to the base Registry Agreement, such as sunrise requirements, rules around premium names, and time allowed to go-live. The DG has also showed interest in understanding the impact of vertical integration.</p>

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	<p>requirements relating to contractual conditions should be applied, or existing requirements updated in light of new market conditions or practices, for example, the presence of vertical integration, and adoption of a Code of Conduct.</p>	
<p>6 Public interest guidance</p>	<p>The New gTLD Program was developed in the spirit of advancing the public interest; however, existing policy advice does not define the application of “public interest” analysis as a guideline for evaluation determinations on individual applications. Issues such as those identified in GAC advice on safeguards, the development of Public Interest Commitments (PICs), and associated questions of contractual commitment and enforcement may be an area for policy development.</p>	<p>The GNSO Discussion Group (DG) is has raised the issue of whether the unsure whether Public Interest Commitments are sufficient to protect the interests of Internet users, but otherwise expressed no other concerns as it relates to public interest guidance. Based on the input of the Board, the GNSO Council will invite the DG to consider public interest provisions more broadly.</p>
<p>7 Applicant support program</p>	<p>Existing policy implementation guidelines provide that ICANN may develop a fee reduction scheme to aid applicants from economies classified by the UN as least developed. An applicant support program was included in the application process for this round; however, additional policy guidance on the construction and rules of this program could be sought.</p>	<p>The GNSO Discussion Group (DG) has noted that the has raised the issue of whether the applicant support process may have been overly concerned with preventing gaming, thereby possibly discouraging applicants from using the process. The DG is also wondering examining whether usage of the applicant support process may have been due to a lack of outreach to would-be applicants in least-developed economies.</p>
<p>8 Name collision</p>	<p>The NGPC passed a resolution on 30 Jul 14 directing staff to work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken.</p>	<p>As noted in the Description and Rationale section of this document, the GNSO Council is currently considering the possibility of policy development work for a long-term name collision plan.</p> <p>The GNSO Discussion Group (DG) has also noted a few concerns has raised issues of whether the -necessity and effectiveness of related to controlled interruptions and the complexity of the framework. The DG and the GNSO Council will consider coordinating their efforts to avoid duplicate and</p>

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9	<p data-bbox="506 358 1234 743"><u>At the top level:</u> The Applicant Guidebook approved by the Board in 2011 incorporated text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, “until the GNSO and GAC develop policy advice based on the global public interest.” In April 2012, the NGPC passed a resolution acknowledging receipt of GNSO policy advice on extending certain protections to the Red Cross/Red Crescent and the International Olympic Committee names at the top level but directing no changes to the Guidebook for the current application round.</p> <p data-bbox="506 786 1234 1339"><u>At the second level:</u> In September 2012, the NGPC requested input from the GNSO on any advice the Board should take into account in considering second level protections for IOC and Red Cross/Red Crescent names, via a reserved list. The GNSO provided its response in February 2013. In April 2014, the Board passed a resolution adopting certain of the GNSO recommendations on the Protection of IGO-INGO Identifiers in All gTLDs (those identified as not inconsistent with GAC advice), and indicated that it would consider the remaining recommendations and facilitate discussions among the relevant parties to reconcile any remaining differences between the policy recommendations and the GAC advice on the topic. On 16 June 14, the NGPC provided a letter giving the GNSO an opportunity to consider modifying some of the policy recommendations that conflict with the GAC advice pursuant to the GNSO Operating Procedures. The GNSO</p>	<p data-bbox="1266 285 1465 313">conflicting work.</p> <p data-bbox="1266 358 2011 529">As noted in the Description and Rationale section, there is a GNSO Council approved PDP for IGO and INGO protections currently being implemented where the recommendations do not conflict with GAC Advice. In addition, there is a pending PDP on curative rights for IGO and INGOs.</p> <p data-bbox="1266 571 1934 634">The GNSO Discussion Group (DG) has thus far raised no further issues regarding IGOs and INGOs.</p>

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	<p data-bbox="508 284 957 315">provided a response on 7 October 14.</p> <p data-bbox="508 354 1157 451">In June 2014 the GNSO voted to initiate a new PDP on Curative Rights Protections for IGO/INGOs. This PDP is underway and is related to the topic.</p>	